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ANG CHIN HIANG

v.

SUPERINTENDENT OF LANDS AND SURVEYS, SAMARAHAN

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HIGH COURT SABAH & SARAWAK, KUCHING
DAVID WONG DAK WAH J
[SUIT NO: LR 15-06-2004-III]
17 APRIL 2009

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LAND LAW: *Acquisition of land - Award of compensation - Review of - Application for - Market value of land - Determination of - Valuation method - Discussion of - Total value representing fair market value of land- Whether reached*

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The objectors' land situated in Bukit Berangan, Samarahan, containing an area of 20,135 hectares (ie approximately 49.75 acres) and described as Lot 490 Block 25 Muara Tuang Land District (the subject land) was acquired by the government for a proposed Army Headquarters. An inquiry was held on 28 July 2000, after which the Superintendent of Lands & Surveys awarded compensation in the sum of RM2,325,345 (*ie.* RM115,000 per hectare) inclusive of compensation of RM9,820 for the crops. The objectors rejected the compensation amount and applied to the court for review. The issue that needed to be determined by this court was the market value of the land.

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Held:

(1) The respondent's case was contained in exh. B which was the valuation report of RW1 and in arriving at the market price RW1 had used twelve comparables but only one, namely Lot 211 Block 25 Muara Tuang Land District (Lot 211), was of Mixed Zone use while the rest were native area land. The use of native lands as comparable was not proper for the simple reason that native lands could only be legally transacted among the Sarawak natives while Mixed Zone land could be transacted among all Malaysians. This court had to reject RW1's valuation of RM115,000. (paras 9 & 11)

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(2) The objector's case was based on the evidence of OW1 that had used only two land sales as comparables for calculation of the market value of the subject land which were Lot 211 and Lot 240. OW1 had made adjustments according to sale, size, ground level, location and term of title to the two comparables and concluded that the market value should be RM280,000. Common to the reports of OW1 and RW1 was the use of Lot 211 as a comparable sale to the subject land. Lot 211's land use was similar to that of the subject land *ie*, Mixed Zone. A transaction of sale for that land occurred on 21 July 1998 with a price of RM295,612 per hectare. The land size was 2.1650 hectares. Because of this commonality both assessors were of the view that Lot 211 should be accepted as the yardstick in determining the market value of the subject land. There was no valid reason to disagree with such view. (paras 12 & 15)

(3) However, the assessors came to different conclusions as to the amount of the market value of the subject land. The first assessor concluded that the market value of the subject land should be RM239,446 per hectare while the second assessor concluded that it should be RM185,000 per hectare. The issue that arose was whether this court should award the sum of RM3,725,000 (second assessor's value) or RM4,821,245 (first assessor's value) to the objectors. This court was of the view that the second asssesor's views were fair and reasonable and hence should be accepted except for two adjustment factors (i) the location factor should be adjusted to -10% for the reason that the subject land did not have main road frontage which would mean that the owner would have to use financial resources to gain access to the main road by using other land owners' lands and (ii) the 'ground level' should only be adjusted to +5%. Although a land higher than the road level may be an advantage but there was no evidence showing the monetary advantage it would gain, hence a nominal 5% adjustment was fair and reasonable in the circumstance. (paras 16 & 19)

A **(4)** With the adjustments, the total adjustment would then be -29% which would make the adjusted value per hectare to be RM209,884.52 (RM209,880 per hectare). This would make the total value of RM4,225,933.80 which represented the fair market value of the subject land. (para 20)

B *[Order accordingly.]*

Case(s) referred to:
Ahmat Gani & Ors v. Superintendent of Lands and Surveys, 1st Division [1978] 1 MLJ 253 ***(refd)***
C *Ng Tiou Hong v. Collector of Land Revenue, Gombak [1984] 1 CLJ 350; [1984] 1 CLJ (Rep) 289 FC* ***(refd)***
Sim Ah Oh v. PP [1962] 28 MLJ 42 ***(refd)***
Sim Ah Song & Anor v. Rex [1951] 17 MLJ 150 ***(refd)***
Superintendent of Lands and Surveys, Sarawak v. Aik Hoe & Co Ltd [1966] 1 MLJ 243 ***(refd)***
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Legislation referred to:
Sarawak Land Code, ss. 60(1), 61

For the objector - Grace Tan; M/s Chong Brothers Advocates
E *For the respondent - Yap Khan Kee; State A-G's Chambers*
For the assessors - Hj Radzali Hj Alison (Lee Tong Bian with him)

Reported by Suhainah Wahiduddin

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JUDGMENT

David Wong Dak Wah J:

Introduction

G **[1]** The objectors' land situated at Bukit Berangan, Samarahan, containing an area of 20.135 hectares (ie, approx 49.75 acres) and described as Lot 490 Block 25 Muara Tuang Land District (the subject land) was acquired by the government for a proposed
H Army Headquarters. The s. 48 notice was published in the Gazette on 2 April 1998. An inquiry was held on 28 July 2000, after which the Superintendent of Lands & Surveys awarded compensation in the sum of RM2,325,345 (ie, RM115,000 per hectare) inclusive of compensation of RM9,820 for the crops.

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[2] The objectors rejected the compensation amount and applied to the court for review. A

The Law

[3] The onus of proving that the award is inadequate lies with the objectors. Suffice for me to just refer to the case of *Superintendent of Lands and Surveys, Sarawak v. Aik Hoe & Co. Ltd* [1966] 1 MLJ 243, where Suffian J held: B

> I agree also with the submission that it is for the owners to prove that the award was inadequate. Broomfield J in *Assistant Development Officer, Bombay v. Tayaballi Allibhoy Bohori* AIR [1933] Bom 361, said at page 364: C
>
> > The party claiming enhanced compensation is more or less in the position of a plaintiff and must produce evidence to show that the award is inadequate. If he has no evidence the award must stand, and if he succeeds in showing *prima facie* that the award is inadequate, then Government must support the award by producing evidence. D

[4] As for the amount of compensation to be awarded it is guided by ss. 60 and 61 of the Sarawak Land Code (the Code). Section 60(1)(a) reads as follows: E

> (1) In determining the amount of compensation to be awarded for the land resumed under this Part, the Court shall take into consideration the following matters and no others: F
>
> (a) the market value at the date of the publication of the notification under section 47 or, if no such notification has been published, the market value at the date of posting of the declaration made under section 48. G

Issue

[5] The issue which needs to be determined by this court is this:

What Is The Market Value Of The Land? H

[6] In *Superintendant of Lands and Surveys, Sarawak v. Aik Hoe & Co Ltd. (supra)*, Suffian J (as he then was) stated:

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The issue, as already stated, is simple one: what was the market value of these two lots on the agreed material date 1st April 1960. In determining this amount the court must not take into consideration any disinclination on the part of the owners to part with the lots resumed nor any increase in the value of the lots likely to accrue from the use to which they will be put when resumed (section 61 Land Code).

[7] In *Ng Tiou Hong v. Collector of Land Revenue, Gombak* [1984] 1 CLJ 350; ([1984] 1 CLJ (Rep) 289), the Federal Court through the judgment of Syed Agil Barakhbah at p. 351 (pp. 291-292) made the following observation:

There are of course other principles that have to be applied according to the facts and circumstances of a particular case along the lines provided by the First Schedule to the Act and as decided from time to time by the Courts. We consider the following as the main principles:

Firstly, market value means the compensation that must be determined by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser. The elements of unwillingness or sentimental value on the part of the vendor to part with the land and the urgent necessity of the purchaser to buy have to be disregarded and cannot be made a basis for increasing the market value. It must be treated on the willingness of both the vendor to sell and the purchaser to buy at the market price without any element of compulsion.

Secondly, the market price can be measured by a consideration of the prices of sales of similar lands in the neighbourhood or locality and of similar quality and positions.

Thirdly, its potentialities must be taken into account. The nature of the land and the use to which it is being put at the time of acquisition have to be taken into account together with the likelihood to which it is reasonably capable of being put to use in the future eg, the possibility of it being used for building or other developments. Fourthly, in considering the nature of the land regard must be given as to whether its locality is within or near a developed area, its distance to or from a town, availability of access road to and within it or presence of a road reserve indicating a likelihood of access to be constructed in the near future, expenses that would likely be incurred in levelling the surface and the like.

Fifthly, estimates of value by experts are undoubtedly some evidence but too much weight should not be given unless it is supported by, or coincides with, other evidence. (Superintendent of *Lands and Surveys, Sarawak v. Aik Hoe & Co. Ltd.* [1966] 1 LNS 188, *Vyricherla Narayana Gajapatiraju v. The Revenue Divisional Officer, Vizagapatam* [1939] AC 302, 312, and *Nanyang Manufacturing Co. v. Collector of Land Revenue, Johore* [1954] MLJ 69).

The safest guide is evidence of sales of similar lands of similar quality or position in the locality at or prior to the time of acquisition. The prices paid for such sales can be used as comparables subject to making allowances for all the circumstances.

Evaluation Of The Evidences

[8] From the outset I should set out a brief description of the subject land which is as follows:

Location of the land:	Lot 490 Block 25, Muara Tuang Land District,
Size:	20.135 hectares
Term of Title:	Expiring on 31 December 2024
Category:	Mixed Zone Land/Suburban Land
Special Condition:	This land is to be used only for agricultural purposes
Valuation date:	2 April 1998 – section 48 of Land Code publication

The Respondent's Position

[9] The respondent's case is contained in exh. B which is the valuation report of RW1 (valuer from the Land and Survey Department, Kuching). In arriving at the market price RW1 had used 12 comparables but only one, namely Lot 211 Block 25 Muara Tuang Land District (Lot 211), is of Mixed Zone use while the rest are native area land. The use of native lands as comparables is, with respect and in my opinion, not proper for the simple reason that native lands can only be legally transacted among the Sarawak natives while Mixed Zone land can be transacted among all Malaysians. My opinion is reflected in the evidence of OW1 (the valuer called by the objectors) when he said:

> To use the sales for native land as comparable in the valuation is contradicting the Comparison Method of Valuation which involves comparison of like with like. If the purchasing group for two lands are different then comparison of these lands are not meaningful as comparison means like with like. There is no common denominator.

[10] This is the position taken in the case of *Ahmat bin Gani & Ors v. Superintendent of Lands and Surveys, 1st Division* [1978] 1 MLJ 253 at 257. That case dealt with the calculation of compensation for acquisition of native reserve land. It was argued by the objector there that the court should use the method of valuation applicable to mixed zone land. The Federal Court rejected the argument and held that:

> ... to equate lands belonging to one class with lands classified under another class for the purpose of making awards under the Land Code, in respect of land acquisition is wrong in principle and not supported by authority. There must be a stated accepted foundation for fixing a figure, otherwise an award would be defective as being an award made *ex vacuo* without a stated foundation.

[11] Hence I am left with no option but to reject RW1's valuation of RM115,000.

The Objector's Case

[12] The objector's case is based on the evidence of OW1, who is a valuer from the firm of CH Williams, Talhar, Wong & Yeo Sdn Bhd and had used six comparables. However OW1 only used two land sales as comparables for calculation of the market value of the Subject Land. These two comparables are Lot 211 and Lot 240 Block 25 Muara Tuang Land District (Lot 240). Lot 211 has an expiry date at 31 December 2066 (unexpired term of 70 years) while Lot 240 has a title in perpetuity. OW1 then made adjustments according to sale, size, ground level, location and term of title to the two comparables and concluded that the market value should be RM280,000 (see p. 14 of exh. A).

[13] In assessing the evidence of the experts I am guided by what was said by Adam J in *Sim Ah Oh v. PP* [1962] 28 MLJ 42 at p. 43:

> The evidence of the expert must be tested like any other evidence against the facts upon which he is disposing. The expert should have been asked by the prosecutor to elaborate and give his reasons as to why he said these odd pieces of paper were in fact documents relating to public lottery, and the learned President should have considered these reasons before he came to his finding.

and by Brown Ag. CJ in *Sim Ah Song & Anor v. Rex* [1951] 17 MLJ 150 at p 151 said:

> The responsibility for the determination of this question, as in the case of every question upon which expert evidence is called, rested upon the Court and not upon the expert. The business of an expert witness is to draw upon the store of his knowledge and experience in order to explain some matter which his experience should qualify him to understand. He is quite entitled to express his opinion, which indeed is the natural corollary of his explanation. But a bare expression of his opinion has no evidential value at all. Unless he gives an explanation which supplies the understanding of the subject which the Court lacks, the Court is in no better position than it was before to determine the question which it is its duty to determine, and if the Court acts upon a bare expression of the expert's opinion the determination of the question becomes that of the expert and not of the Court.

[14] In this case I am of course fortunate to have the benefit of the expertise of two assessors, namely, Hj Radzali bin Hj Alision (1st assessor) who is a qualified private valuer and Lee Tong Bian (2nd assessor) who is the district valuer from the Valuation and Property Services Department, Ministry of Finance Malaysia, Kuching. Both had prepared and submitted their reports to me based on the understanding that they would not consult each other during the process of preparing their respective reports. I commend them for their professionalism.

[15] Common to the reports of OW1 and RW1 is the use of Lot 211 as a comparable sale to the subject land. Lot 211's land use is similar to that of the subject land ie, Mixed Zone. A transaction of sale for that land occurred on 21 July 1998 with a price of RM295,612 per hectare. The land size is 2.1650 hectares. Because of this commonality both assessors are of the view that Lot 211 should be accepted as the yardstick in determining the market value of the subject land. I see no valid reason to disagree

with such view. In fact this is what is required, as stated in the decision of the Federal Court case of *Ng Tiou Hong v. Collector of Land Revenue, Gombak (supra)* cited above.

[16] However the assessors came to different conclusions as to the amount of the market value of the subject land. The 1st assessor concluded that the market value of the subject land should be RM239,446 per hectare while the 2nd assessor concluded that it should be RM185,000 per hectare. The manner in which they came to their conclusion is clearly set out in the report of the 1st assessor and for clarity I reproduce it here:

E. My Opinion

1) In the open market, selling price for parcels of land with Native Area Land title land are normally lower than those for Mixed Zone Land as the number of buyers are restricted and limited.

2) Native Area Land titled land should only be used in the real absence of transaction involving Mixed Zone Land when the subject land, ie, the one to be valued, is Mixed Zone Land. In this case, we should only use comparable sale in the Mixed Zone Land category.

3) As both valuers have relied on the transaction affecting Lot 211 Block 25 Muara Tuang Land District, this transaction can be accepted as good comparable. This transaction will be analysed and used to value the subject land.

4) The Quality Point Rating (QPR) and Weighted Quality Scores (WQS) are more difficult to use. In real life, it is difficult, without extensive study, to determine which factor has more weightage and which one has the lowest weightage. In addition, it is not easy to determine, for example, what size of land commands a perfect score of 10.

5) It is easier to understand when adjustments are made directly between the comparables and the subject land using percentages.

6) Using the Lands & Surveys' valuer's QPR/WQS analysis of comparable sale of Lot 211, I have below presented the Lands & Surveys' analysis in another manner:

	Factors	Calculation (difference X weightage)	Adjustment	WQS	Percentage
1.	Location	(-20% x 0.6)	-12.00%	x0.93	-11.16%
2.	Size	(-87.5% x 0.6)	-17.50%	x0.93	-16.27%
3.	Term of Title	(-77.8% x 0.1)	-7.78%	x0.93	-7.24%
4.	Shape	(71.5% x 0.05	-3.57%	x0.93	-3.32%
5.	Date of Transaction	(+11.1% x 0.05)	+0.55%	x0.93	+0.51%
	Total				**-37.48%**

Comparable price RM295,612.01

Adjusted Premium RM184,816.00

This figure is slightly higher than RM184,360.18 obtained by the Lands & Surveys' valuer due to the decimal points.

7) Comparison of analysis of comparable sales of Lot 211 is shown below.

		Lands & Surveys	C.H Williams	My Opinion	Remarks
	Base Value (RM)	295,612.01	295,612.01	295,612.01	Based on transaction value
1.	Location	-11.16%	-5%	-5%	Lands are close to each other except that one has a direct main road frontage.
2.	Size	-16.27%	-8%	-8%	In agriculture size can be an advantage, but a small discount for larger land is normal.

3.	Term of Title	-7.24%	-13%	-13%	Huge difference in their remaining unexpired terms should be reflected adequately.
4.	Shape	-3.32%	N/A	-3%	Not that relevant for agricultural land unlike development land but since the comparable land is of better shape, an adjustment of 3% is justifiable.
5.	Date of Transaction	+.51%	0%	0%	Dates are very near, no adjustment needed.
6.	Ground Level	N/A	+25%	+10%	Land higher than road or surrounding land is an advantage.
	Total adjustment	-37.48%	-1%	-19%	
	Adjusted Value (RM) per hectare	184,816.00	292,655.00	239,446.00	

8) In my opinion the fair value should be around RM239,446.00 per hectare, giving a total value of RM4,821,245.00 (Ringgit Malaysia: Four Million Eight Hundred Twenty-one Thousand Two Hundred and Forty-Five Only) for the 20.135 hectares land.

[17] The 2nd assessor also used the sale consideration of Lot 211 as its base value and then made the necessary adjustments to the factors used by RW1 which led him to the conclusion that the adjusted market value per hectare of the subject land to be RM184,360.18 (say RM185,000 per hectare) making the total market value of the subject land as RM3,724,975 (say RM3,725,000). His adjusted market value per hectare is approximately the same amount (RM184,816) as worked out by the 1st assessor as set out in the column under the heading "Lands and Surveys". This is significant as the assessors did not consult each other in the preparation of their respective reports. Because of this I have no doubt in my mind that the objectors have established that the awards made by the respondent were inadequate.

[18] The issue which confronts me is whether I should award the sum of RM3,725,000 (2nd assessor's value) or RM4,821,245 (1st assessor's value) to the objectors.

[19] Having studied all the reports with care and having considered the submissions tendered by counsels, I am of the view that the 2nd assessor's views are fair and reasonable and hence should be accepted except for two adjustment factors:

1. The 'Location' factor should be adjusted to -10% for the reason that the subject land does not have main road frontage which would mean that the owner would have to use financial resources to gain access to the main road by using other land owners' lands.

2. The 'Ground Level' should only be adjusted to +5%. Though I agree that a land higher than the road level may be an advantage but there is no evidence before me showing the monetary advantage it would gain, hence a nominal 5% adjustment, in my view, is fair and reasonable in the circumstances.

[20] With the above adjustments, the total adjustment would then be -29% which would make the adjusted value per hectare to be RM209,884.52 (say RM209,880 per hectare). This would make the total value of RM4,225,933.80 (Ringgit Malaysia: Four Million Two Hundred and Twenty Five Thousand Nine Hundred and Thirty Three and Cents Eighty only) which, in my view, represents the fair market value of the subject land.

[21] For the reasons stated above I make the following orders:

(i) The Superintendent of Lands & Surveys, Samarahan Division, Award No. 563/2002 dated 17 September 2002 in respect of the subject land at the rate of RM115,000 per hectare to the Objectors be increased to RM209,880 per hectare;

(ii) The objectors be paid the excess of RM1,910,408.80 (ie, 20.135 hectares x RM209,880 – RM115,000);

(iii) Interest on the excess amount of RM1,910,408.80 at the rate of 4% per annum from 17 December 2002 (the date of possession) to the date of payment under s. 69 of Sarawak Land Code;

(iv) Pursuant to s. 67(c) of the Land Code there shall be no order as to costs as the objectors' claims exceed 20% of the amount awarded by the respondent and

(v) Each assessor shall be paid RM100 for each day's attendance in court.

[22] I hereby order so.